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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke Probation  
Against:

MARK ALLEN LIVENGOOD  
3935 N. Ricewood  
Fresno, CA 93705

RCP License 23657

Respondent.

Case No.

**PETITION TO REVOKE  
PROBATION**

Complainant alleges:

**PARTIES**

1. Stephanie Nunez (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about June 23, 2004, the Respiratory Care Board issued Respiratory Care Practitioner License Number 23657 to Mark Allen Livengood (Respondent). Said License was in effect at all times relevant to the charges brought herein and will expire on January 31, 2009, unless renewed.

3. In a disciplinary action entitled "In the Matter of the Accusation Against Mark Allen Livengood," Case No. R-2056, the Respiratory Care Board issued a decision effective May 14, 2007, in which Respondent's License was revoked. However, the revocation

1 was stayed and Respondent was placed on probation for a period of three (3) years with certain  
2 terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by  
3 reference.

#### 4 JURISDICTION

5 4. This Petition to Revoke Probation is brought before the Respiratory Care  
6 Board (Board), Department of Consumer Affairs, under the authority of the following laws. All  
7 section references are to the Business and Professions Code unless otherwise indicated.

8 5. Section 3710 of the Code states: "The Respiratory Care Board of California,  
9 hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the  
10 Respiratory Care Practice Act]."

11 6. Section 3718 of the Code states: "The board shall issue, deny, suspend,  
12 and revoke licenses to practice respiratory care as provided in this chapter."

#### 13 COST RECOVERY

14 7. Section 3753.5, subdivision (a) of the Code states:

15 "In any order issued in resolution of a disciplinary proceeding before the board,  
16 the board or the administrative law judge may direct any practitioner or applicant found to have  
17 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the  
18 investigation and prosecution of the case."

19 8. Section 3753.7 of the Code states:

20 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall  
21 include attorney general or other prosecuting attorney fees, expert witness fees, and other  
22 administrative, filing, and service fees."

23 9. Section 3753.1 of the Code states:

24 "(a) An administrative disciplinary decision imposing terms of probation may  
25 include, among other things, a requirement that the licensee-probationer pay the monetary costs  
26 associated with monitoring the probation. "

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1 FIRST CAUSE TO REVOKE PROBATION

2 10. The Decision and Order in Case No. R-2056, Probation Condition 2 states:  
3 "Respondent, at his expense, shall participate in random  
4 testing, including, but not limited to, biological fluid testing..."

5 11. Respondent is in violation of Probation Condition 2 because on September  
6 18, 2008, he did not telephone Compass Vision Inc. (CVI), which administers the Board's  
7 random testing program. He was selected for random testing on that date and did not appear for  
8 testing.

9 SECOND CAUSE TO REVOKE PROBATION

10 12. The Decision and Order in Case No. R-2056, Probation Condition 5 states:  
11 "Respondent shall file quarterly reports of compliance  
12 under penalty of perjury, on forms to be provided... Failure  
13 to submit complete and timely reports shall constitute a  
14 violation of probation."

15 13. Respondent is in violation of Probation Condition 5 because he failed to  
16 submit quarterly reports of compliance for three reporting periods: July 1, 2007 - September 30,  
17 2007; April 1, 2008 - June 30, 2008; and July 1, 2008 - September 30, 2008.

18 THIRD CAUSE TO REVOKE PROBATION

19 14. The Decision and Order in Case No. R-2056, Probation Condition 6 states:  
20 "Respondent shall comply with requirements of the Board  
21 appointed probation monitoring program..."

22 15. Respondent is required to telephone Compass Vision Inc. (CVI) on a daily  
23 basis to determine if he has been selected for random drug and alcohol testing. Respondent's  
24 probation is subject to revocation because he failed to telephone CVI on the following dates:  
25 2007: August 11; September 23; October 14, 28; November 13 and 17; December 15.  
26 2008: January 10, 24, 27; February 1; March 26; April 2, 21, 26, 27; June 10, 11, 12, 13, 15, 18,  
27 20, 22, 30, July 1, 6, 12, 13, 15, through and including the date of filing this Petition.

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3. Ordering Mark Allen Livengood to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if probation is continued or extended, the costs of probation monitoring;

4. Taking such other and further action as deemed necessary and proper.

DATED: November 17, 2008

Original signed by Liane Zimmerman for:  
STEPHANIE NUNEZ  
Executive Officer  
Respiratory Care Board of California  
Department of Consumer Affairs  
State of California  
Complainant

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